Royal Canadian Mounted Police
External Review Committee

2014-15
Annual Report

Canada

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Comité externe d'examen
de la Gendarmerie royale du Canada

June 25, 2015

The Honourable Steven Blaney, P.C., M.P.
Minister of Public Safety and Emergency Preparedness
269 Laurier Avenue West
Ottawa, Ontario
K1A 0P8

Dear Minister:

In accordance with Section 30 of the *Royal Canadian Mounted Police Act*, I am pleased to submit to you the annual report of the RCMP External Review Committee for fiscal year 2014-15, so that it may be tabled in the House of Commons and in the Senate.

Yours truly,

Elizabeth M. Walker
Chairperson

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Message from the Chair

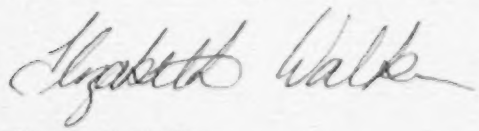
I am honoured to have been appointed Chair of the RCMP External Review Committee (ERC) during this past fiscal year.

The ERC plays a critical independent role in the labour relations processes of the RCMP through its specialized and rigorous case file reviews, findings and recommendations. The ERC does not represent the interests of either RCMP members or management. Established over many years by the leadership of prior Chairs and the dedication and professional excellence of its staff, the integrity and independence of the ERC provides accountability and fosters confidence in the RCMP's internal labour processes.

On November 28, 2014, significant amendments to the *RCMP Act*, *RCMP Regulations* and new *Commissioner's Standing Orders* came into force establishing a new mandate and framework for the ERC. The ERC's mandate will continue to focus on labour relations matters of significance to the RCMP and its members, most notably conduct matters, discharge and demotion decisions and decisions in harassment complaints.

We continue to receive referrals from the RCMP of cases under the former legislation. We also have a significant backlog of cases. Addressing the backlog is a priority for the ERC as lengthy delays in the issuance of findings and recommendations by the ERC reduces the relevance of the findings and causes uncertainty for both the members involved and the RCMP. In 2014-15, the ERC provided findings and recommendations to the Commissioner of the RCMP for 40 case files and significant progress was made in reducing the backlog of cases.

The ERC also began preparations for its operations under the new legislation and reviewed its management of legacy cases in 2014-15. We introduced enhanced tracking, monitoring, analysis and assessment of case review processing practices and increased coordination with the RCMP on program administration. I am grateful to the ERC team for all that was done on these (and other) fronts prior to my arrival mid-year. Much of this work continues in 2015-16 as the ERC transitions to operations under the new legislation. Most critically, we have commenced the required monitoring and analysis of our work in order to establish and make public service standards respecting time limits for ERC case reviews.



Elizabeth Walker

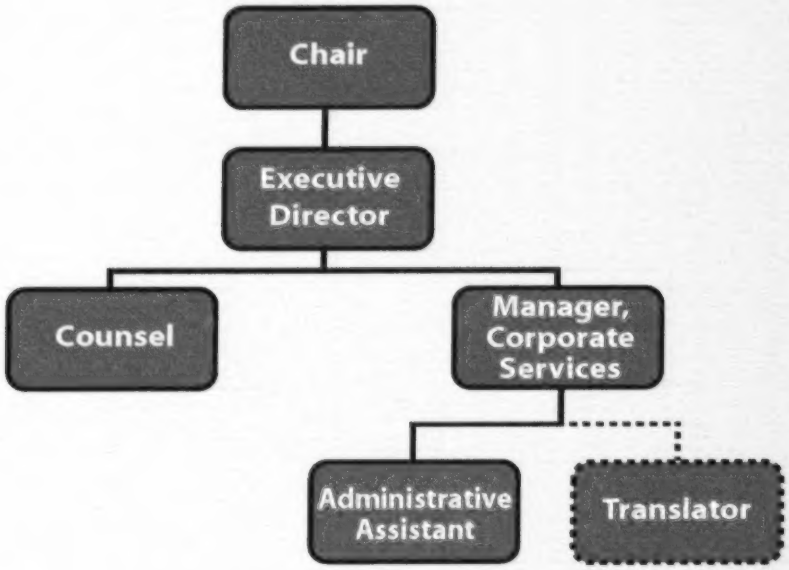
PART I - Role and Organization

The ERC is the independent federal tribunal established by Parliament over twenty five years ago to carry out impartial reviews of RCMP labour relations matters, such as appeals of disciplinary decisions and decisions regarding allegations of harassment. As a quasi-judicial tribunal, the ERC applies the rule of law and, through its work, helps to ensure transparency, fairness and impartiality in RCMP processes.

The jurisdiction of the ERC is restricted to certain labour relations cases involving regular and civilian RCMP members only. Public servants employed by the RCMP have separate labour relations processes. Once the ERC reviews a case, it issues findings and recommendations to the Commissioner of the RCMP, who then makes the final decision.

The ERC is headed by a Chair who is appointed by order of the Governor in Council, and is the organization's Chief Executive Officer and deputy head. The ERC Chair reports to Parliament through the Minister of Public Safety and Emergency Preparedness. No member of the RCMP is eligible to be appointed as the Chair or as a member of the ERC (the Chair is currently the sole member of the ERC).

The ERC staff is comprised of an Executive Director, legal counsel who have expertise in labour, employment and administrative law, and program administrators who ensure the day-to-day operations of a modern public institution, as well as an in-house translator providing services to the program.



In 2014-15, the ERC's operating budget was $1.6 million. The majority of resources - approximately 70% - were used for case file reviews; approximately 5% were used for outreach and communications supporting the case file review program; and the remainder were used for internal services, corporate reporting and planning (e.g., human resources, financial and facilities management, procurement, departmental reports, information management, security, web management).

The ERC Case File Review Program

The case file review program is the sole program of the ERC. The ERC does not select the cases it reviews. The *RCMP Act* and *Regulations* require the Commissioner of the RCMP to refer certain cases to the ERC. The case file review process begins when a referred file from the RCMP arrives at the ERC.

The scope and nature of the matters referred to the ERC for review by the RCMP changed recently when amendments to the *RCMP Act*, *RCMP Regulations* and associated *Commissioner's Standing Orders* came into force, as of November 28, 2014, as part of implementing the *Enhancing RCMP Accountability Act*. The previous provisions governing the work of the ERC had been in place for more than 25 years - many were amended or repealed.

The recent changes have led to the ERC receiving two streams of case referrals from the RCMP: one under the new legislation; the second as "legacy" referrals under the former legislation (for cases that commenced within the RCMP prior to the new provisions coming into force).

When the ERC reviews a case, it examines the entire record provided including all supporting documentation, the initial decision(s) made, and the submissions of the parties. The ERC Chair may request that one or both parties provide additional information or submissions. If information is received from a party, procedural fairness dictates that the other party is given the chance to respond. The Chair also has the authority to hold a hearing if necessary, although this option is very rarely exercised. The Chair considers all of the evidence, legal issues, and relevant legislation, case law and policies before making findings and recommendations.

The Chair's findings and recommendations are provided to the Commissioner of the RCMP and to the parties involved. The Commissioner is the final decision-maker and must consider the ERC's findings and recommendations. If the Commissioner does not follow the ERC's recommendations, the *RCMP Act* requires the Commissioner to include the reasons for not doing so in the decision.

"Legacy" Cases - Former Legislation

The ERC anticipates that files will be referred by the RCMP under the old legislation as "legacy" cases for several years, consistent with previous time frames regarding referrals. These legacy cases include (see also the Chart, *ERC Case File Reviews - Scope and Process*, page 6):

Grievances:

Under the former *RCMP Act*, "grievances" referred to the ERC covered a broad range of member rights and interests, from claims for reimbursement of expenses to the right to work in an environment free from harassment and discrimination. Grievances have historically represented the greatest number of cases referred to the ERC.

In the grievance process, an RCMP officer designated as a Level I Adjudicator considers and decides a grievance. If the grievor is dissatisfied with the Level I Adjudicator's decision, the grievor may file a Level II grievance which is decided by the Commissioner of the RCMP or a designate. Under *Part III* of the former *RCMP Act* and section 36 of the former *RCMP Regulations*, the Commissioner refers grievances involving the following issues to the ERC for its review:

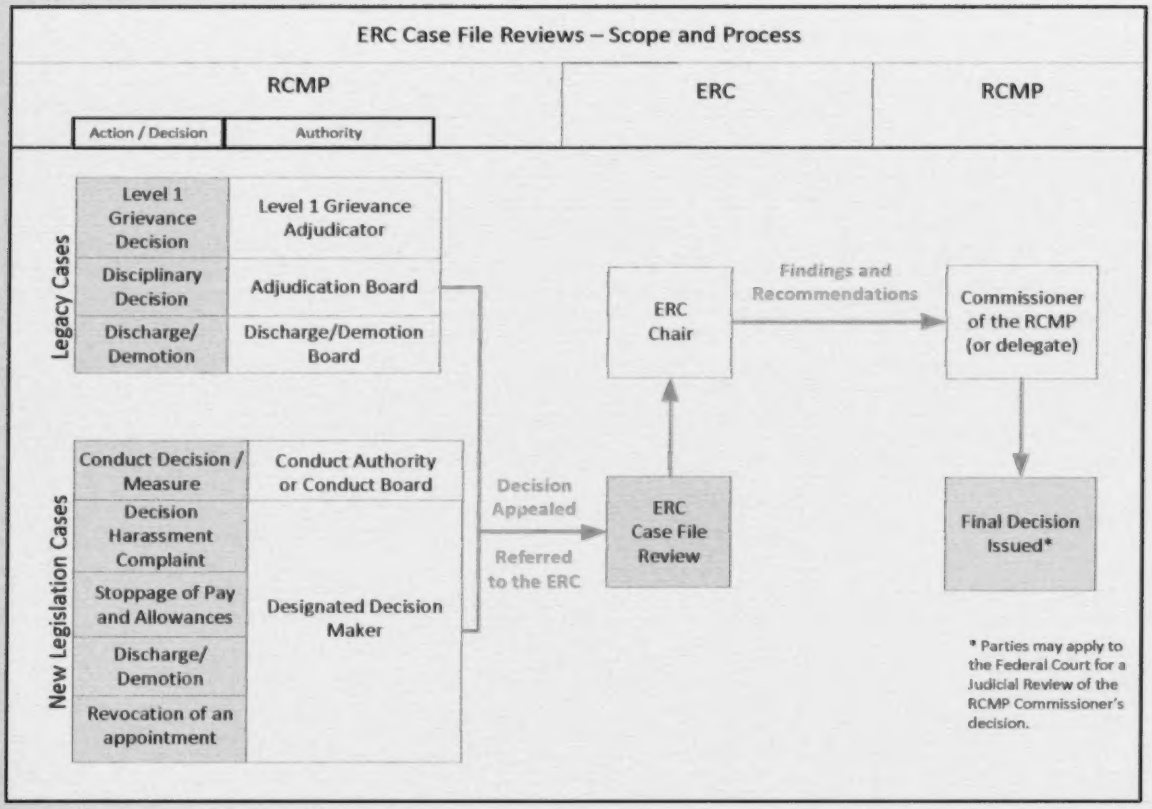
- the Force's interpretation and application of government policies that apply to government departments and that have been made to apply to members;
- the stoppage of the pay and allowances of members made pursuant to subsection 22(3) of the former *RCMP Act*;
- the Force's interpretation and application of the *Isolated Posts Directive*;
- the Force's interpretation and application of the *RCMP Relocation Directive*; and
- administrative discharge for reasons of physical or mental disability, abandonment of post or irregular appointment.

Appeals of Discipline (Adjudication) Board Decisions:

Under *Part IV* of the former *RCMP Act*, when an RCMP member is alleged to have committed a serious violation of the RCMP *Code of Conduct* and formal discipline is initiated, an internal hearing is held to determine whether or not the allegations are established and, if so, the appropriate sanction. The matter is heard by an Adjudication Board consisting of three RCMP officers. If, after the Board renders its decision, either the Force or the member wishes to appeal that decision to the Commissioner of the RCMP, the Appellant and the Respondent provide written submissions to the Commissioner. The Commissioner then refers the file to the ERC for its review.

Appeals of Discharge/Demotion Board Decisions:

Under *Part V* of the former *RCMP Act* (now repealed), a discharge or a demotion proceeding may be initiated against a member for failing to perform his/her duties in a satisfactory manner. When this happens, the member may request that a Discharge and Demotion Board, consisting of three officers of the RCMP, be convened to review the matter. The decision of the Board may be appealed by either the member or the Appropriate Officer who initiated the proceeding. Appeal submissions are made in writing to the Commissioner of the RCMP. The Commissioner then refers the appeals to the ERC for its review.



New Legislation Cases

The mandate of the ERC under the current *RCMP Act*, *RCMP Regulations* and new *Commissioner's Standing Orders* (*CSOs*) is more focused on matters which are of significant importance to RCMP members and to the Force as an organization.

Appeals of written decisions regarding harassment complaints remain within the mandate of the ERC, as do appeals of decisions for discharge/dismissal and demotion in a number of contexts. Appeals regarding conduct matters (formerly disciplinary appeals) also continue to be referred to the ERC. The key shift in the mandate of the ERC under the new legislation is that decisions on concerns associated with travel, relocation and other financial or compensation-related matters will no longer be referred to the ERC *except* as legacy cases (see also the Chart above, *ERC Case File Reviews - Scope and Process*).

The categories of cases that are referable to the ERC under the new legislation are:

Conduct Decisions/Measures Imposed on Members:

There is a wide range of conduct measures which can be imposed on a member of the Force for a contravention of the *Code of Conduct* of the RCMP. Conduct measures may be imposed by a Conduct Authority - managers at several levels, as identified in the *CSOs*; or, by a Conduct Board - one or more persons appointed by an officer designated by the Commissioner.

A Conduct Authority may impose certain measures on a member for contravention of the *Code* as set out in the *CSOs*. They fall into three categories: remedial (e.g., admonishment, direction to undergo training, a reprimand); corrective (e.g., forfeiture of annual leave up to 80 hours, deferment of a pay increment or ineligibility for promotion for up to one year); and, serious (e.g., removal of duties, demotion, transfer, financial penalty deducted from pay, ineligibility for promotion or deferment of a pay increment for up to two years, and dismissal). A Conduct Board is convened when dismissal of a member is sought by a Conduct Authority. If a Conduct Board finds an allegation has been established, the *RCMP Act* provides that one or more of the following measures be imposed: recommendation for dismissal; direction to resign within 14 days or be dismissed; or, one or more of the measures available under the *CSOs*.

Appeals of a Conduct Board decision may be made by the member or by the Conduct Authority who initiated the hearing and may be based on any finding that an allegation was established or on any conduct measure imposed. A member who is the subject of a Conduct Authority decision may appeal any finding that an allegation was established or any resulting conduct measure imposed.

Appeals of Conduct Board and Conduct Authority decisions to impose the following measures are referable to the ERC:

a. financial penalty of more than one day of a member's pay;
b. demotion;
c. direction to resign; and,
d. dismissal or a recommendation for dismissal.

Decisions on Harassment Complaints:
An appeal by a complainant of a written decision regarding a harassment complaint by a designated decision maker following an investigation of the complaint is referable to the ERC. A respondent in a harassment complaint (the person alleged to have engaged in harassing behaviour) may appeal a harassment-related decision when certain conduct measures are imposed.

Decisions to Discharge or Demote a Member:

An appeal of a decision to discharge or demote a member for the following reasons is referable to the ERC: unsatisfactory performance; being absent from duty; conflict of interest; and, disability, as defined in the *Canadian Human Rights Act*.

Stoppage of Member Pay and Allowances:

An appeal of a decision to stop a member's pay and allowances while a member is suspended from duty is referable to the ERC if the decision is made because a member was suspended for contravening or being suspected of contravening the *Code of Conduct*, an Act of Parliament, or an Act of a legislature of a province.

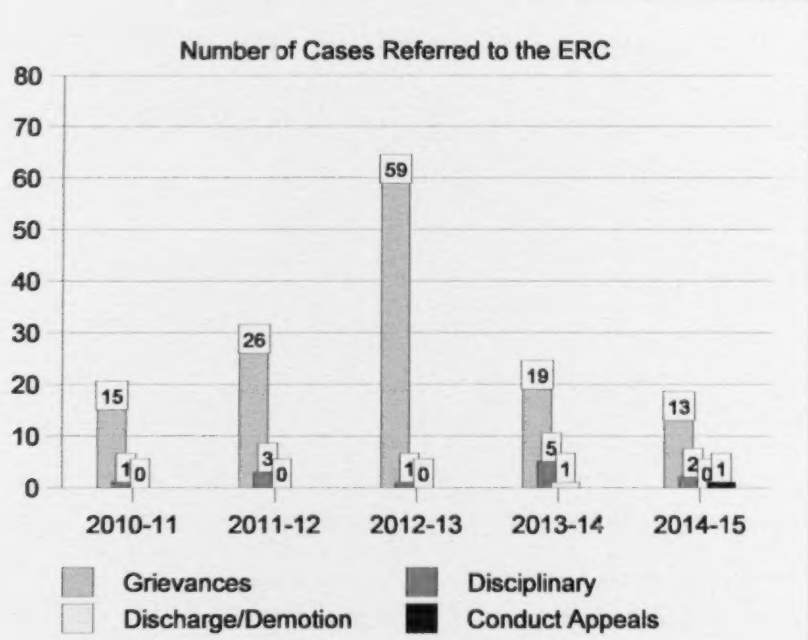
Revocation of an Appointment:
An appeal of a decision revoking the appointment of a person as a member or revoking the appointment of a member by way of promotion to a higher rank or level is referable to the ERC.

PART II - Our Results for 2014-15

Case File Reviews

Referrals

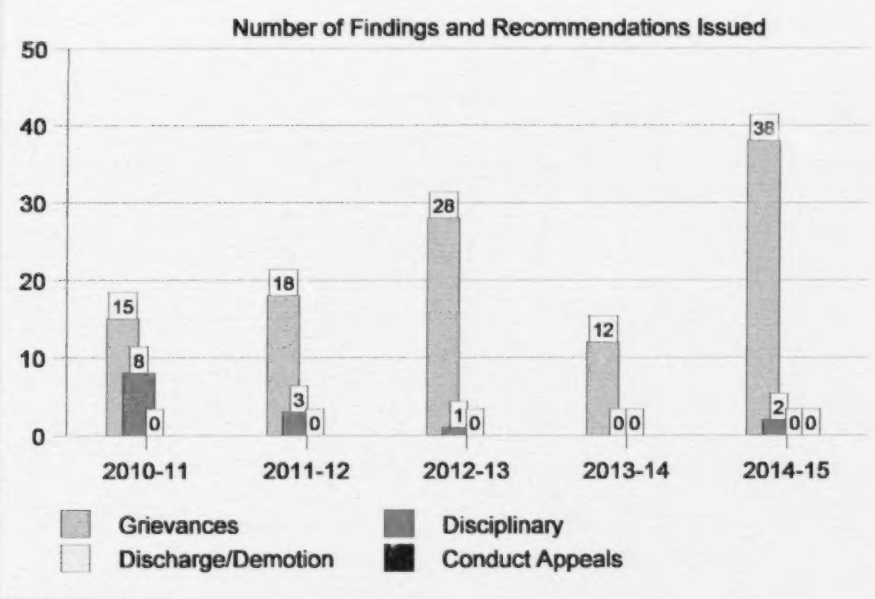
The ERC received 16 referred case files from the RCMP in 2014-15, including 13 grievance files and two disciplinary appeals under the old legislation. The ERC received one referral under the new legislation, an appeal of a conduct authority decision (the first referral under the new legislation). The number of referrals for 2014-15 was lower than the average of 29 over the past five years.



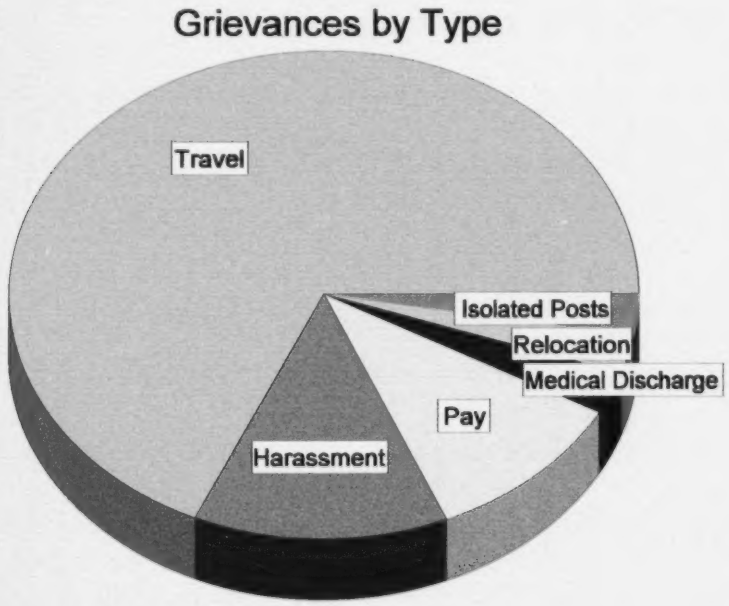
All of the files referred to the ERC in 2014-15 were pre-screened to determine if there were any preliminary issues (e.g., referability or time limit considerations), to assess the complexity of each file and to identify key considerations (e.g., the extent of possible impacts on members) or any matters requiring early attention from the ERC Registry.

Cases Completed - Findings and Recommendations Issued

The ERC processed 42 case files in 2014-15. Findings and recommendations were issued for 40 files: 38 grievance files and two disciplinary appeals. The remaining two files were screened by the ERC but were returned to the Force as they had been referred inadvertently. There were no findings and recommendations issued for discharge or demotion cases this year. No referred cases files were withdrawn by before the ERC could issue its findings and recommendations.



The two discipline appeals files completed by the ERC last year each involved a Board sanction of a direction to resign. The chart below shows the distribution of file types among the 38 grievance case files completed. Travel claims, pay-related matters and harassment complaint files accounted for a significant portion of grievance reviews in 2014-15, as has been the case for a number of years.



Progress in Addressing the "Backlog"

The ERC had 64 legacy case files in progress at the end of 2014-15, including 53 grievances, 10 disciplinary appeals and one discharge appeal, as well as one conduct authority decision appeal under the new legislation.

The backlog of legacy case files at the ERC was reduced by 30% in 2014-15: from 91 at the beginning of the year to 64 at year end. This reduction was a function of several factors, most notably: the expedited processing of files with preliminary issues such as time limit questions; the ERC's efforts to tailor and adapt case review practices to optimize efficiencies; a significant number of files dealing with relatively straightforward travel claims issues; and, the ERC receiving less referrals from the RCMP than usual (about half of what has been the annual average over the past five years). Progress in addressing backlogged legacy cases in 2015-16 and in future years will vary, depending, in large measure, on two principal factors: the caseload of the ERC (including the numbers of files referred to the ERC, both as legacy cases and under the new legislation, and the nature and complexity of those files); and, the resources available to the ERC.

Setting Priorities for Reviews

Case files are generally processed in the order in which they are received by the ERC, in the interests of fairness and equity. However, in instituting active management of our legacy cases, the ERC has prioritized cases to improve efficiency and to recognize the differing impacts our delays occasion on the members involved and the organization (e.g., for disciplinary files where the sanction would be dismissal or for files involving discharge).

In addition, the ERC has prioritized files involving preliminary issues (such as time limit questions, or the issue of whether a matter is actually referable to the ERC). These files can often be processed quickly and it is important to remit them back to the RCMP on a timely basis to allow final decisions to be made and processes to be concluded within the Force.

The ERC is continuing to develop its framework to assign priority for its case file reviews, recognizing that sanctions in new legislation cases will apply to members immediately and are not stayed pending appeal (as they have been historically under the former legislation).

Highlights of Cases in 2014-15

As a quasi-judicial tribunal, the ERC applies the rule of law and is guided by the principles of fairness, impartiality, independence and transparency in conducting its case reviews. The ERC is a recommending body. It issues findings and recommendations the same way that an adjudication body issues decisions. This section summarizes some of the key aspects of cases the ERC reviewed and in respect of which it issued findings and recommendations in 2014-15.

Grievance Decision Appeals

Under *Part III* of the *RCMP Act*, a member could submit a grievance if the member was aggrieved by a decision, act or omission made in the administration of the Force's affairs. The ERC reviews certain types of grievances instituted under the former *RCMP Act* where a grievor seeks a review of a Level I decision. This year, the ERC considered a range of grievance subjects, including preliminary issues and issues going to the merits of cases.

Preliminary Issues

Preliminary issues generally must be addressed by parties and adjudicators before the merits or substance of a grievance may be argued and decided. In the context of RCMP grievances, some preliminary issues arise from statutory requirements while others arise from the common law. The ERC addressed numerous preliminary issues this year, including:

- the ERC's jurisdiction to make findings and recommendations in a grievance, as set out in section 36 of the *RCMP Regulations, 1988* (***G-564***, ***G-565***, ***G-566***, ***G-567***, ***G-598***);
- a member's standing to grieve pursuant to subsection 31(1) of the *RCMP Act* (***G-570***, ***G-571***);
- whether a grievance was presented within the time limits prescribed in subsection 31(2) of the *RCMP Act* (***G-563***, ***G-569***);
- whether the RCMP met its disclosure obligations set out in subsection 31(4) of the *RCMP Act* (***G-568***);
- whether a matter was moot (***G-571***); and
- whether the grievance process was procedurally fair (***G-568***).

Depending on the type and significance of the preliminary issue(s) raised in a particular grievance, the ERC may recommend various outcomes. These can vary from taking no action, to allowing the grievance, to adopting any number of other or combined approaches.

Financial Compensation

This year, the ERC considered a number of grievances which raised issues concerning the financial compensation of members. Some of the issues covered involved the private accommodation allowance (PAA), meal expenses and certain benefits for members serving at isolated posts.

PAA:

The *Treasury Board Travel Directive* (*TBTD*) provides for three types of accommodations for members on travel status. These include commercial accommodations, government and institutional accommodations, and private non-commercial accommodations. A member who resides in a private non-commercial accommodation is entitled to a (PAA), which is a financial benefit.

G-599 involved a Grievor who stayed in a double-occupancy hotel room, which is a commercial accommodation, while providing police services at the Sommet de la Francophonie. Upon his return, the Grievor sought a PAA. The Force denied the request. The Grievor filed a grievance in which he made two interrelated arguments. First, he argued that the *TBTD* required that travelers occupying commercial accommodations be placed in a single occupancy room. Second, given the Grievor was made to stay in a double occupancy room, he should be deemed to have stayed in a private non-commercial accommodation and receive the accompanying PAA.

The ERC recommended that the grievance be denied. The *TBTD* established a norm that travelers occupying a commercial accommodation would stay in a single occupancy room. However, a norm is not an absolute. Circumstances may arise in which it is not reasonably possible for the Force to follow a norm. In any event, the fact remained that the Grievor stayed in a commercial accommodation, not a private non-commercial accommodation. Therefore, the Grievor was not entitled to a PAA.

Meal Expenses:

The *TBTD* provides that employees may be reimbursed the meal expenses they incur while on travel status. In ***G-572*** to ***G-593***, the Grievor was reimbursed mid-shift meal

costs he incurred on travel status at the lunch rate set out in the *TBTD*. The Grievor sought reimbursement of his mid-shift meal expenses at the higher dinner rate on the ground that he took those meals in the evening. The Force denied the request. The Grievor initiated multiple grievances; one for each denied reimbursement at the dinner rate. In one of the cases (***G-593***), the Grievor sought a retroactive reimbursement at the dinner rate for all the meals he took over a five-year period.

The ERC recommended that all of the Grievor's grievances involving reimbursements of mid-shift meal expenses at the dinner rate (i.e. ***G-572*** to ***G-592***) be denied. The *TBTD* required that shift workers be reimbursed meal expenses in accordance with the breakfast-lunch-dinner meal sequence, regardless of whether a person worked a day shift or a night shift. The Grievor was, therefore, properly reimbursed his mid-shift meal expenses at the lunch rate. The ERC recommended that ***G-593*** be allowed, in part, as it was unclear if the Grievor was properly reimbursed certain verifiable dinner expenses he incurred while he was in travel status.

Benefits for Members at Isolated Posts:

The RCMP polices numerous remote areas known as isolated posts. The RCMP reimburses members and their dependants for travel expenses when members need to receive medical treatment at an urban center because facilities at the isolated post are insufficient. The Force also offers members and their dependants living at isolated posts vacation travel assistance (VTA), regardless of whether they take vacations.

In ***G-597***, the Grievor fell ill while on vacation with his dependants away from their isolated post. When the Grievor's vacation leave ended, the family did not return to the isolated post. Rather, they remained in a city so the Grievor could receive medical treatment. They later vacated their home at the isolated post. The Grievor ultimately submitted the family's medical travel expense claims. The Respondent audited the claims and omitted the dependents' travel costs. The Respondent reasoned that, because the Grievor did not need a medical escort during his treatment, the claims were not payable under the *Isolated Posts and Government Housing Directive* (*IPGHD*). The Grievor filed a grievance.

The ERC recommended that the Commissioner allow the grievance, in part. The Grievor was not entitled to a reimbursement of medical travel expenses incurred on his dependants' behalf during in the period in which the dependents could have returned to their home at the isolated post. However, the Grievor was entitled to a reimbursement of certain of his dependents' medical travel costs incurred after the family had vacated their home at the isolated post, as no suitable arrangements could be made for the dependents. The Grievor's case was exceptional, as that concept was described in the Force's Travel Policy. Therefore, certain expenses were allowable.

In ***G-600***, the Grievor submitted a claim for VTA. The Respondent received the claim on April 9, 2010. The Respondent determined that the claim was payable at a rate the Treasury Board Secretariat (TBS) published on April 1, 2010. The Grievor felt the claim was payable at higher rates published by the TBS in May 2009. He asserted that, in accordance with a supplemental "*Note*" contained in the applicable provision of the *IPGHD*, VTA rates remained in effect for 12 months. The Respondent rejected that position, alleging that it conflicted with *IPGHD* guidance documents and asserting that the 2009 rates had been superseded. The Grievor initiated a grievance.

The ERC recommended that the Commissioner deny the grievance. The inclusion of the supplemental note in the applicable provision of the *IPGHD* was not meant to create rigid effective periods for VTA rates. The note did not override the words in the body of the provision it accompanied, which referred only to the creation of annual and semi-annual VTA rates. This interpretation was supported by *IPGHD* guidance documents, which illustrated two significant points. First, a VTA rate would apply until the TBS published a new VTA rate. Second, on April 1, 2010, the prior VTA rate became inoperative and a new VTA rate took effect.

Harassment Complaints

The ERC is committed to assisting the Force in achieving its objective of providing a harassment-free workplace. The ERC has traditionally reviewed two types of harassment grievances: those in which harassment is alleged and those in which the Force's administration of its harassment complaint process is scrutinized. This year, the ERC reviewed multiple grievances in the latter category.

G-594, ***G-595*** and ***G-596*** arose from the decisions of different respondents to respectively deny three separate but related harassment complaints presented by the same member against three distinct alleged harassers.

In ***G-594***, the Grievor submitted a harassment complaint against a superior containing eight allegations. Following an investigation, the Respondent determined that, although none of the allegations had been established, two allegations involved significant and unwelcome conduct which had to be addressed. The Grievor submitted a grievance. One of his arguments was that the Respondent failed to consider the alleged incidents of harassment in their entirety.

The ERC found that the grievance should be allowed. The Respondent's decision was at odds with relevant harassment authorities. Specifically, the Respondent did not apply a key principle in harassment policies that a series of serious and unwelcome acts over time may be indicative of harassment. While the Respondent found that the Alleged Harasser committed two troubling acts over time, the Respondent failed to consider if those acts could have together constituted harassment. The ERC recommended that the Commissioner quash the Respondent's decision. The ERC also recommended that the Commissioner apologize to the Grievor for the fact that the Respondent's decision was inconsistent with applicable harassment authorities.

The identical issue was raised in ***G-596***. However, the ERC reached a different conclusion in this case. Once again, the Grievor brought a harassment complaint against a superior. The complaint contained multiple allegations and was investigated. The Respondent decided that the allegations were unfounded. The Grievor commenced a grievance and submitted that the Respondent failed to consider alleged incidents of harassment in their entirety.

The ERC recommended that the Commissioner deny the grievance. Unlike ***G-594***, in ***G-596*** there was no identified series of offensive and unwelcome incidents which could properly be reviewed as a whole to consider if they represented a course of repeated conduct constituting harassment. The Respondent's failure to consider if multiple allegations might cumulatively amount to harassment was accordingly not a violation of harassment authorities. Moreover, the decisions of the Respondent and the Level I Adjudicator were

not otherwise problematic.

Finally, in ***G-595***, the Grievor again filed a harassment complaint against a superior, comprising three allegations. Following an investigation, the Respondent found that none of the allegations were proven. The Grievor presented a grievance in which he characterized the Respondent's decision as "[un]*informed*" and "[un]*ethical*". The Grievor did not make any submissions or arguments in support of his position. Rather, he repeatedly stated that he had been harassed.

The ERC did not address the Grievor's position that he had been harassed, for two reasons. First, the subject matter of the grievance was whether the Respondent's decision to deny the Grievor's harassment complaint accorded with relevant laws and policies. Second, the alleged harasser was not a party to the grievance and did not have an opportunity to be heard at Levels I or II.

The ERC recommended that the Commissioner deny the grievance, as the Grievor had failed to satisfy his burden of persuasion. The Grievor offered no submissions or arguments in support of his claim that the Respondent's decision was uninformed and unethical. The Grievor also failed to explain why he disagreed with the Level I decision. Although the record included documents from the harassment investigation file, they did not suggest that the Respondent's decision was clearly uninformed or unethical. The ERC would not infer examples of impropriety from the record in this case, as to do so would have been speculative and without evidentiary foundation.

Discipline Decision Appeals

Pursuant to section 45.15 of the *RCMP Act* prior to amendment as of November 28, 2014, the Commissioner referred appeals of decisions of RCMP disciplinary adjudication boards (board) to the ERC before considering the appeal. In accordance with *Part IV* of the *RCMP Act*, the ERC reviews the entire record of proceedings, including the hearing transcript, tendered evidence, board decision, and appeal submissions. The ERC then submits a thorough report to the Commissioner and the parties, containing the ERC's findings and recommendations with respect to the issues arising in the appeal.

This year, the ERC issued findings and recommendations in two disciplinary appeals which each raised multiple significant issues. One issue concerned the importance of ensuring that members facing discipline are treated in a procedurally fair manner by being given precise particulars of the allegations against them. Another issue involved the circumstances in which it is appropriate for a board to make findings regarding an issue that has been the subject of findings in a criminal proceeding involving the same matter. A further issue related to the manner in which boards should treat joint submissions on sanction.

Adequacy of Particulars

In a discipline matter, the particulars of an allegation describe the misconduct in which a member allegedly engaged. They also help the member understand and respond to an allegation in a meaningful way.

In ***D-126***, the ERC addressed the role particulars play in helping to ensure that a hearing is fair. The Member allegedly conducted himself disgracefully by engaging in sexual activity while on duty (Allegation #1). He also allegedly made a false statement to a superior officer regarding that encounter (Allegation #2). Paragraphs 5 and 6

of the particulars for Allegation #1 were the same as the particulars for Allegation #2, in that both sets of particulars referred to the alleged false statement. At the beginning of the hearing, the Appropriate Officer Representative (AOR) withdrew Allegation #2. Yet paragraphs 5 and 6 remained in the particulars of Allegation #1 and the Board did not ask the AOR if he intended to withdraw paragraphs 5 and 6.

The Member admitted Allegation #1 but disagreed that it alleged non-consensual sexual activity. As a result, the Board held a hearing on the question of whether the sexual activity was consensual, during which it heard evidence involving the consent issue and the Member's alleged false statement. The Board ultimately found that the scope of Allegation #1 was limited to consensual sexual activity and did not include the alleged false statement, even though paragraphs 5 and 6 remained in the particulars of Allegation #1.

The Board found Allegation #1 was established. It then held a sanction hearing and ordered the Member to resign. In the course of the sanction hearing, the Board considered evidence adduced during the hearing into the consent issue, including evidence regarding the Member's alleged false statement. The Member appealed the Board's decisions on the allegation and the sanction.

The ERC recommended to the Commissioner that the appeal be allowed. Although the ERC agreed that the particulars of Allegation #1 were restricted to the issue of consensual sexual relations, it found that the Board should have made a ruling on that issue and confirmed the nature of the misconduct raised in the particulars before hearing evidence. The Board's failure to make the ruling led to the introduction of evidence intended to establish a lack of consent. The Board erred by relying on that evidence in support of an order to resign.

The ERC also found that at the outset of the hearing, the Board should have clarified whether paragraphs 5 and 6 of the Allegation #1 were effectively withdrawn in light of the withdrawal of Allegation #2. As Allegation #1 pertained only to on-duty sexual activity, evidence regarding statements to a superior were irrelevant to the Board's decision. The Board's failure to initially clarify that issue led to the admission of irrelevant evidence regarding statements made by the Member, which the Board erroneously considered when it ordered the Member to resign.

The ERC recommended that a new hearing be ordered.

Relitigation of Issues

Adjudication Boards must sometimes make findings on issues that were addressed in criminal proceedings arising from the same incident. The ERC occasionally reviews an appeal involving an assertion that a board has improperly re-litigated a finding that was previously made at a criminal trial.

D-125 involved a member who sexually assaulted another member at an off-duty party. At the criminal trial, the Member entered a guilty plea to a lesser charge of assault. The evidence before the trial judge did not include the fact that sexual touching occurred during the assault. At sentencing in the criminal matter, the trial judge found that there was no breach of trust resulting from the assault.

In the subsequent proceeding before an RCMP adjudication board, the evidence indicated that sexual touching did occur. The Member also admitted that his actions constituted a sexual

assault. The Board found that the member committed a breach of trust and ordered him to resign. The Member appealed, arguing this was an improper relitigation of the trial judge's finding.

The ERC recommended that the Commissioner deny this ground of appeal. In so doing, it referred to Supreme Court of Canada jurisprudence recognizing that relitigation of a finding may be permitted where new evidence conclusively impeaches the original results or when fairness dictates that the original result should not be binding in a different context.

The Board's finding of a breach of trust within the context of an alleged sexual assault did not amount to an improper relitigation of the criminal trial judge's finding relating to an assault charge. The Board was tasked with assessing the impact of the misconduct on the employment relationship, a context different than the assessment of breach of trust during criminal sentencing. In addition, there was evidence before the Board which was not before the trial judge. This included a description of the sexual touching, a victim impact statement and testimony from the Member's supervisor describing the supervisor's loss of trust in the Member.

Joint Submissions on Sanction

Parties in a disciplinary hearing can decide to jointly make a submission to an adjudication board when they agree on an appropriate sanction. Although a board is not bound to agree with a joint submission, the board must consider it in deciding what sanction to impose. As a general rule, board decisions concerning appropriate sanctions attract deference on appeal. A sanction imposed by a board may be reviewed on appeal when a board makes an "error of principle". One such reviewable error is a board's improper treatment or disregard of a joint submission by both parties.

In ***D-126***, the parties made a joint submission on sanction consisting principally of a forfeiture of 10 days' pay. The Board rejected the joint submission without discussing whether there was an appropriate range of sanctions and ordered the Member to resign. The Member filed an appeal.

The ERC recommended that the Commissioner allow the appeal. The Board erred in rejecting the joint submission in this case. Although a board is not bound by a joint submission, it must still seriously consider the submission. The ERC noted that the test for determining whether a board may reject a joint submission on sanction involves an analysis of whether the proposed sanction brings the administration of justice into disrepute or is contrary to the public interest.

In the ERC's view, the Board did not give the proposed sanction the serious consideration that it required, as the Board failed to explain why the proposed sanction would be contrary to the public interest or bring the administration of justice into disrepute. The proposed sanction fell within the range of sanctions cited in other similar cases and was reasonable in the circumstances.

The ERC recommended that the Commissioner impose the sanction the parties had proposed in their joint submission to the Board.

Outreach and Communications

Outreach and communication, in a variety of forms, are important components of the work of the ERC and support the ERC's contributions to effective labour relations practices and accountability in the RCMP.

The ERC *Communiqué*, usually published quarterly, includes case review summaries and articles on issues that commonly arise in cases. It is distributed to RCMP detachments and offices across Canada and is posted on the ERC website as a resource promoting awareness and understanding of workplace and labour relations issues. Three *Communiqués* were published and distributed in 2014-15.

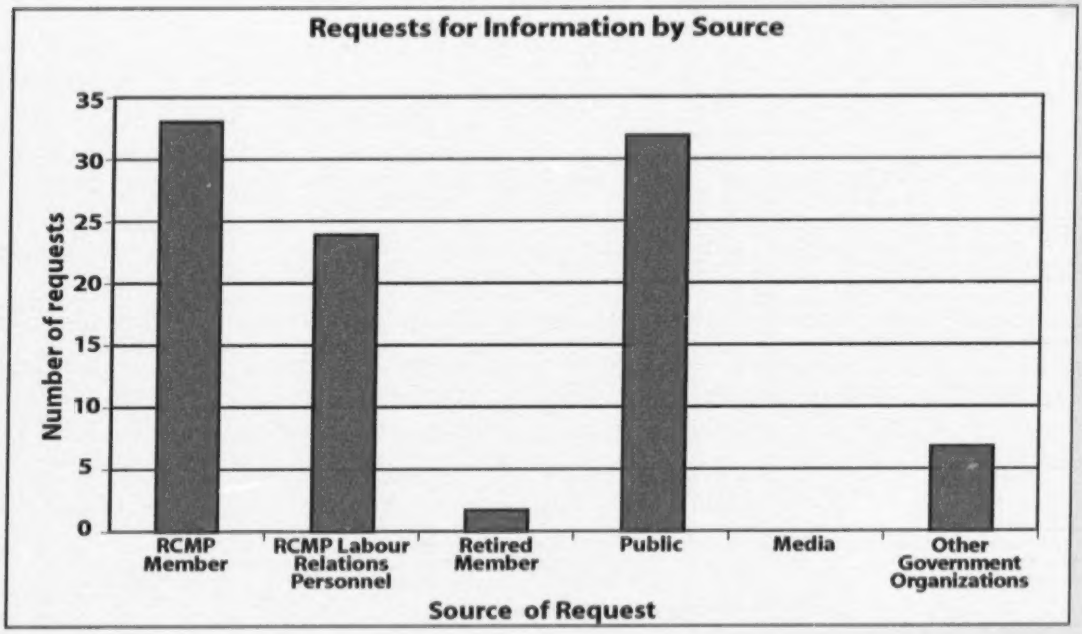
The ERC website (www.erc-cee.gc.ca) contains key reference materials and corporate reports, including ERC Annual Reports to Parliament and *Communiqués*. The website also offers an extensive searchable database that includes summaries of the ERC's findings and recommendations, as well as summaries of the Commissioner of the RCMP's decisions on files reviewed by the ERC. The ERC's most requested articles, discussion papers and specialized reports highlighting key issues related to the work of the ERC can also be found on the website.

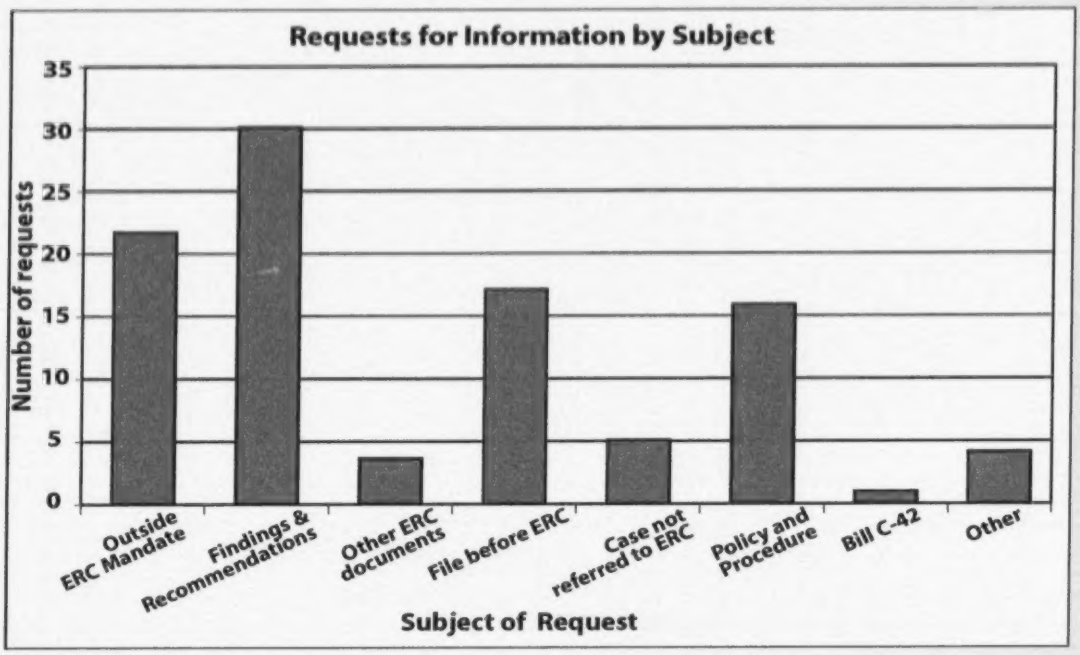
Outreach activities historically have included information or training sessions with RCMP members in National Headquarters, Divisional Headquarters and detachments, along with participation in or support regarding RCMP training. In 2014-15, ERC staff provided an information session for newly-appointed RCMP Staff Relations Representatives. Regular discussions with RCMP program managers were instituted to provide additional coordination between the two organizations on program administration. Several ERC team members also participated in RCMP in-house training for several days on the subject of the implementation of the new legislation.

There may be scope for expanded outreach by ERC staff with various elements of the RCMP. This will be pursued consistent with operational priorities and available resources.

Requests for Information

The ERC responds to requests for information about its program and activities each year from members of the public, the media, other government organizations and from within the RCMP itself. The ERC received and responded to 98 such requests in 2014-15. Just over half came from the RCMP, with either RCMP members or RCMP labour relations personnel typically enquiring about the status of files or the role of the ERC. Members of the public were the second largest group of requesters and typically sought general information about the ERC program. On average, the ERC provided an answer to each request within one day. Occasionally, there was a need to undertake research or verification and the response was provided as soon as possible. Charts providing summary information are below.


Requests for Information by Source
Number of requests
35
30
25
20
15
10
5
0
RCMP Member
RCMP Labour Relations Personnel
Retired Member
Public
Media
Other Government Organizations
Source of Request


Requests for Information by Subject
Number of requests
35
30
25
20
15
10
5
0
Outside ERC Mandate
Findings & Recommendations
Other ERC documents
File before ERC
Case not referred to ERC
Policy and Procedure
Bill C-42
Other
Subject of Request

The Government of Canada is implementing government information and services online through its central website, *Canada.ca*. Service Canada is the Principal Publisher. The ERC has been engaged in the *Canada.ca* initiative, including in discussions on themes and topics for navigation pages with Service Canada and with Public Safety Canada as a theme leader - the focus of which was on how best to help users find the services and the information they need. An institutional profile for the ERC was created and published on *Canada.ca* in March 2015. The ERC's current website will remain active until the migration of all web content to *Canada.ca* is complete.

Corporate Services

The ERC must meet a range of accountability, reporting and other management requirements, statutory and otherwise, just as large organizations do, including for delegated human resources and financial authorities, information management, access to information and privacy, communications, procurement, accommodations, corporate reporting, *inter alia*. Given the small size of the ERC organization and the very wide range of requirements to be met and responsibilities to be fulfilled, the ERC uses a flexible approach that leverages internal capacities and external sources of support is used. In 2014-15 as in previous years, the ERC sought and received support and advice from the small agency community and from central agencies, procured services to support certain activities, and arranged for a wide scope of corporate services support from Public Safety Canada under a memorandum of understanding.

An important corporate activity carried out in 2014-15 was the establishment of an updated ERC record keeping plan consistent with the Treasury Board *Directive on Record Keeping*. In a related vein, ERC staff undertook basic security awareness training to reinforce the understanding of requirements and to help ensure that practices in the ERC for the protection of information and other assets remain vigorous.

PART III - ERC Operations Under the New *RCMP Act*

The changes to the *RCMP Act* and the *RCMP Regulations* along with new *Commissioner's Standing Orders*, which came into force as of November 28, 2014, introduced a new mandate for the ERC and will, of necessity, lead to changes in how the ERC works.

There are a number of challenges and opportunities for the ERC associated with the implementation of the new legislation, key of which are summarized below, all relating to the ERC's continued role as an independent administrative tribunal.

Challenges and Opportunities

Labour relations matters referred to the ERC for review must be addressed fairly and transparently and as quickly as possible.

Timeliness in the conduct of reviews is a critical issue - undue delays can compromise both the substance and the actual and perceived validity of findings and recommendations and, ultimately, of final decisions. Unresolved workplace conflicts can and do affect the wellness and productivity of both implicated employees and others in affected work units. Delays in the processing of files at any stage will frustrate in at least some measure the achievement of the results sought. The ERC will assess its case review practices and enhance timeliness wherever possible.

There is some uncertainty regarding the ERC caseload of legacy cases and new legislation referrals and, consequently, the organization's future resource requirements.

It is possible that future ERC caseloads will outstrip the capacity of the ERC to manage them. This could arise if the number and/or complexity of cases under the new legislation is much greater than anticipated and/or if the processing of new legislation cases leads to operational overheads not now envisioned (e.g., there is a need for the ERC to call hearings to obtain information). If such risks materialize in sufficient degree, a backlog of new legislation cases would begin to accumulate and the existing backlog of legacy cases would also grow. The ERC will monitor program performance to identify and assess any capacity issues and will take action working in consultation with the RCMP as appropriate. The ERC will also prepare a business case to seek stable long term funding for its requirements.

The ERC's findings and recommendations must remain of a high quality.

For every case file referral, the ERC's findings and recommendations must continue to provide an assurance of impartiality, independence and fairness. They must also demonstrate to the parties that they have been heard. The ERC's findings and

recommendations must be based on rigorous analysis, be legally sound and be able to withstand judicial scrutiny. The effectiveness of the ERC's case reviews is based in large part on the level of confidence placed on its substantive findings and recommendations by RCMP members individually and by the RCMP as an organization. Ensuring that changes in program management or delivery do not undermine the quality or integrity of the ERC's findings and recommendations will be an ongoing focus for the ERC.

ERC case review arrangements and practices are being monitored, adjusted and tested through an ERC case review processing initiative.

A key part of the case processing initiative is examining how counsel resources are applied to various files and how the Chair and counsel interact during the case review process. A model which is adaptable, such that counsel resources can be applied in a manner tailored to the nature of individual case files, offers the best prospect for enhancing and ensuring optimal program effectiveness and results. The assessment of case review processes will go hand in hand with, and support, the development of service standards.

The ERC will be establishing service standards and will be reporting publicly on them as required by the *RCMP Act* - these standards will be an important program management and accountability tool.

Service standards are in the initial stages of development, with preparation of a framework to support development underway. In order for the ERC to establish appropriate and achievable service standards, further information is required, principally with respect to future ERC caseload as a function of case file complexities, numbers of referrals and the processes that will be required for the ERC to do its job. It is currently estimated that it will take 12 months of referrals under the new legislation for the ERC to have adequate information to realistically project case loads (the first referral arrived at the end of March, 2015).

Implementing service standard time lines that are unrealistic could pose a risk to the integrity of ERC case reviews if time lines compromise the ERC's ability to complete thorough and sound analyses, findings and recommendations. Equally, service standards that are overly lengthy will not promote timely resolution of cases or otherwise serve program purposes well. The ERC will ensure that service standards are established based on the most reliable and complete information and assessments at its disposal.

ANNEX A
List of Laws, Regulations and Orders

Laws

- *RCMP Act*
- *Enhancing Royal Canadian Mounted Police Accountability Act*

Regulations

Under the RCMP Act (in force as of November 28, 2014)

- *RCMP Regulations* (SOR/2014-281)
- *Regulations Prescribing an Oath of Secrecy* (SOR/2014-280)
- *RCMP Stoppage of Pay and Allowances Regulations* (SOR/84-886)
- *RCMP External Review Committee Rules of Practice and Procedure* (SOR/88-313)
- *Royal Canadian Mounted Police External Review Committee Security and Confidentiality Regulations* (SOR/88-397)

Under the RCMP Act (prior to November 28, 2014)

- *RCMP Regulations* (SOR/88-361)

(Selected) Commissioner's Standing Orders

Under the RCMP Act (in force as of November 28, 2014)

- Commissioner's Standing Orders (Conduct) (SOR/2014-291)
- Commissioner's Standing Orders (Employment Requirements) (SOR/2014-292)
- Commissioner's Standing Orders (General Administration) (SOR/2014-293)
- Commissioner's Standing Orders (Grievances and Appeals) (SOR/2014-289)
- Commissioner's Standing Orders (Investigation and Resolution of Harassment Complaints) (SOR/2014-290)

Under the RCMP Act (prior to November 28, 2014)

- Commissioner's Standing Orders (Grievances) [Repealed] (SOR/2003-181)
- Commissioner's Standing Orders (Representation), 1997 [Repealed] (SOR/97-399)
- Commissioner's Standing Orders (Disciplinary Action) [Repealed] (SOR/88-362)
- Commissioner's Standing Orders (Classification Redress Process for Members) (SOR/2001-248)
- Commissioner's Standing Orders (Practice and Procedure) [Repealed] (SOR/88-367)
- Commissioner's Standing Orders (Qualifications) [Repealed] (SOR/88-366)
- Commissioner's Standing Orders (Dispute Resolution Process for Promotions and Job Requirements) [Repealed] (SOR/2000-141)

ANNEX B

Overview of ERC Findings and Recommendations: 2014-15

ERC Case Number	Subject Matter / Key Issues	ERC Findings and Recommendations
Discipline (Adjudication) Board Decision Appeals		
D-125	Off duty sexual assault of another member. Appeal of sanction consisting of a direction to resign. Sufficiency of reasons for the Board's decision. Re-litigation of a finding made at the member's criminal trial. Consideration of prior employment history. Consideration of expert evidence. Parity (reasonableness) of the sanction imposed by the Board.	Dismiss the appeal and confirm the Board's decision.
D-126	On duty consensual sexual activity. Appeal of finding that the allegation was established and appeal of the sanction consisting of a direction to resign. Procedural fairness in the hearing and sufficiency of particulars. Consideration of a joint submission on sanction made by the parties. Parity (reasonableness) of the actual sanction imposed by the Board.	Allow the appeal on its merits and order a new hearing. Alternatively, allow the appeal on sanction and impose reprimand, recommendation for counselling and forfeiture of ten (10) days' pay.
Grievance Decision Appeals		
G-563	Denial of private accommodation allowance. Time limits for submitting a grievance and possible extension.	Deny the grievance. The grievance was submitted outside of the required time limit and an extension was not warranted.
G-564	Occupational Health & Safety - Medical Profile. Jurisdiction of the ERC.	No legal authority for the ERC to review the file, is not referable (outside s.36 of the *RCMP Regulations*; relevant policy does not apply to government departments and to members).
G-565	Stand-by pay while serving at an isolated two-person post. Jurisdiction of the ERC.	No legal authority for the ERC to review the file, is not referable (outside s.36 of the *RCMP Regulations*; relevant policy does not apply to government departments and to members).

ERC Case Number	Subject Matter / Key Issues	ERC Findings and Recommendations
G-566	Entitlement to additional compensation during a temporary transfer. Jurisdiction of the ERC.	No legal authority for the ERC to review the file, is not referable (outside s.36 of the *RCMP Regulations*; relevant policy does not apply to government departments and to members).
G-567	Severance pay upon retirement. Jurisdiction of the ERC.	No legal authority for the ERC to review the file, is not referable (outside s.36 of the *RCMP Regulations*; relevant policy does not apply to government departments and to members).
G-568	Interpretation and application of the *Relocation Directive*. Procedural errors.	Allow the grievance. Grievor was denied procedural fairness. Declare Level I decision invalid and remit to Level I so that Grievor's disclosure requests can be properly dealt with, parties receive opportunities to present and reply to informed submissions, and a new decision can be made on the basis of a complete record.
G-569	Interpretation and application of the *Travel Directive*. Meal claim. Time limits for filing a grievance.	Deny the grievance. Filed outside the time limits. No circumstances that would allow for an extension.
G-570	Harassment. Requirement for a grievor to have standing to grieve.	Deny the grievance. Grievor does not have standing, as the disputed acts did not occur in the administration of the Force's affairs.
G-571	Harassment. Harassment complaint process. Whether the Respondent was the proper decision maker. Level I ruling that the Grievor did not have standing to grieve the matter.	Although the grievor met the criteria for standing, the grievance is moot as no practical and effective remedy can be provided.
G-572 to G-592	Interpretation and application of the *Travel Directive*. Appropriate reimbursement of mid-shift meals.	Deny the grievance. Mid-shift meal must follow meal sequence for shift workers, notwithstanding when a shift started.
G-593	Interpretation and application of the *Travel Directive*. Meal claim at dinner rate instead of lunch rate while working on shifts.	Partially allow the grievance. Mid-shift meal must follow meal sequence for shift workers. Grievor could be reimbursed at the dinner rate when he was entitled to two meals per shift.

ERC Case Number	Subject Matter / Key Issues	ERC Findings and Recommendations
G-594	Harassment. Harassment complaint process.	Allow the grievance on the merits and quash the decision. The Respondent's decision was not consistent with relevant harassment authorities. Apologize to the Grievor for the fact that the Respondent's decision was not consistent with relevant harassment authorities.
G-595	Harassment. Harassment complaint process.	Deny the grievance on the merits. The grievor's case did not meet the burden of persuasion.
G-596	Harassment. Harassment complaint process.	Deny the grievance on the merits. The process used was sound.
G-597	Interpretation and application of the *Travel Directive*, and the *Isolated Post and Government Housing Directive.* Travel expenses for dependants while a member is on medical leave away from home post.	Partially allow the grievance. Grievor was entitled to some of his dependants' travel expenses.
G-598	Discrimination - Pay equity. Jurisdiction of the ERC.	No legal authority for the ERC to review the file, is not referable (outside scope of s.36 of the *RCMP Regulations*).
G-599	Interpretation and application of the *Travel Directive.* Denial of private accommodation allowance.	Deny the grievance. Grievor stayed in a commercial accommodation; the fact that he had to share his room did not change the nature of the accommodation.
G-600	Interpretation and application of the *Isolated Post and Government Housing Directive.* Claim for expenses.	Deny the grievance on the merits. The claim that was disputed was processed in accordance with policy.

ANNEX C

ERC Staff and Contacts

Staff in 2014-15 *

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David Paradiso, Interim Chair

Jamie Deacon, Executive Director

Josh Brull, Counsel

Martin Griffin, Counsel

Jill Gunn, Counsel

Caroline Verner, Counsel

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